


DEC 28 2004

**PATENT****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of: Ambrosina, et al. Art Unit: 3753  
Application Number(s): 10/816,084 Examiner: Krishnamurthy, Ramesh  
Filing Date: April 1, 2004 Confirm. No.: 9462  
Title: Mass Flow Ratio System and Method  
Docket Number: 56231-386 (MKS-90CN)

**CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. § 1.8(a)**

I hereby certify that this correspondence is being facsimile transmitted to Technology Center 3700 of the U.S. Patent and Trademark Office (Fax No. 703-872-9306) on December 28, 2004.

  
Jeff Miller

Via Facsimile 703-872-9306  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

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DOUBLE PATENTING REJECTION OVER A PENDING SECOND APPLICATION**

Sir:

The owner, MKS Instruments, Inc., of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. §§ 154 to 156 and 173 of U.S. Patent No. 6,766,260. MKS Instruments, Inc. hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and U.S. Patent No. 6,766,260 is commonly owned. This agreement runs with any patent granted on the instant application and is binding upon grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 to 156 and 173 of any patent granted on the second application, as shortened by any terminal disclaimer filed prior to the patent grant, in the event that any such granted patent; expires for failure to pay a maintenance fee, is held unenforceable, is found invalid

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Appl. Serial No.: 10/816,084  
Amendment dated December 28, 2004  
Reply to Office action of September 28, 2004

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I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

The undersigned is an attorney of record and therefore the certification under 37 CFR 3.73(b) is not required.

The Commissioner is hereby authorized to charge the \$130.00 Disclaimer fee, or credit any overpayment, to Deposit Account Number 50-1133.

Respectfully submitted,

McDermott Will & Emery LLP  
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Date: December 28, 2004

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